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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In the Matter of JEOFFREY S., A Person  
Coming Under Juvenile Court Law.

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B173192

(Super. Ct. No. CK49633)

LOS ANGELES COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAWNA Y.,

Defendant and Appellant.

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APPEAL from an order of the Superior Court of Los Angeles County,  
Steve Berman, Referee. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Larry Cory, Assistant County Counsel, and Sterling Honea, Principal Deputy  
County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Dawna Y., mother of Jeffrey S., appeals from the order of the juvenile court that terminated her reunification services. The record shows mother was offered extensive services since the beginning of this case, but did not avail herself of some of the plan. Nor did mother make substantial progress in addressing the problems that triggered the dependency. Mother demonstrated no persuasive reason to extend reunification beyond the outside 18-month deadline. Accordingly, we affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *The incident that triggered the dependency.*

When Jeffrey was 11 years old, the Department of Children and Family Services (the Department) filed a petition alleging mother inappropriately and excessively physically disciplined him, causing the boy unreasonable pain and suffering. Mother and Jeffrey's step-father had recently separated.<sup>1</sup> The juvenile court detained Jeffrey on July 18, 2002.

According to the Department's jurisdiction/disposition report filed in August 2002, Jeffrey described the incident of physical abuse: assuming he had started a fire in the laundry room, mother choked the child with both hands, causing him nearly to black out and to sustain scratches. She hit him with a shoe. Mother threatened to kill Jeffrey and told him she wished he had not been born. Afraid of mother as the result of the choking, Jeffrey called the police. The Department explained that mother had lost control of the boy and did not know how to discipline him. Mother had tried other methods to deal with the child's behavior; all were unsuccessful. Additionally, mother was under tremendous stress as the result of the separation from her husband, caring for her sick mother, working, and raising a difficult child.

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<sup>1</sup> Jeffrey's biological father is unknown and neither he nor Jeffrey's step-father is a party to this appeal.

The juvenile court sustained the petition on September 12, 2002, and declared Jeoffrey a dependent child (Welf. & Inst. Code, § 300, subds. (a) & (b)).<sup>2</sup> Jeoffrey was placed with his paternal step-grandmother. The court ordered as disposition plan: (1) joint counseling, (2) parent education, and (3) individual counseling to address case issues. Mother was granted monitored visitation, with the possibility of liberalization at the Department's discretion.

*2. The six-month hearing.*

Jeoffrey has enormous emotional and behavioral problems. The boy threatened his paternal-step grandmother with a pair of scissors, causing the grandmother to request Jeoffrey's removal from her care. In foster care, Jeoffrey refused to follow house rules and acted aggressively with other children there. He had become so upset after a visit with mother that he banged his head against the wall and freezer door, and tried to put his head in the oven. Additionally, Jeoffrey was failing in school and demonstrated a total disregard for classroom rules. The court ordered Jeoffrey moved to MacLaren Children's Center. Eventually, after several more failed placements, Jeoffrey was placed at Vista Del Mar, a residential facility, where he began to respond to treatment.

Meanwhile, mother was eager for help. The Department provided her with counseling and parenting referrals. By March 2003, she had commenced a parenting course, and had attended at least one support group meeting at Vista Del Mar. Mother's participation in individual counseling, however, was not consistent. Nor was joint counseling consistent: Jeoffrey and mother had only three sessions. Jeoffrey's weekly visits, monitored by Vista Del Mar, went well and progressed from two-hour visits on the grounds, to six-hour visits off-grounds. The Department recommended that Jeoffrey and mother continue with their therapy sessions and that visits be increased. The Department and the Vista Del Mar therapists believed that Jeoffrey and mother required at least six months of intensive and consistent counseling before the therapists could consider returning Jeoffrey to mother's care. Accordingly, the Department recommended six

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

more months of services. Finding mother in compliance with the case plan, the juvenile court extended reunification.

*3. The 12-month review hearing.*

According to the Department's July 17, 2003, report for the 12-month review hearing (§ 366.21, subd. (f)), mother and Jeoffrey received wraparound services from Vista Del Mar. Such services include regular meetings, goal setting, and financial help for mother. Wraparound services are termed a family-centered, strength-based program that attempts to bring about the parents' wishes. Mother regularly attended wraparound meetings and joint counseling sessions with Jeoffrey. During the weekend of July 4, 2003, Jeoffrey had his first overnight visit with mother with wraparound's help. Vista Del Mar recommended the visits be closely watched.

Although Jeoffrey was progressing at Vista Del Mar, his therapist opined it would be premature to reunify Jeoffrey with mother at the 12-month point. The child still struggled to manage his anger. Vista Del Mar reported several incidents in which Jeoffrey caused damage to himself or to property when he became angry. He had to be physically restrained. Jeoffrey was defiant and assaultive, and lacked anger-management skills necessary to cope with his return to mother, who had abused him. Jeoffrey's therapist stated the boy could not be safely returned to mother until he showed greater improvement in his treatment, and acquired better coping skills.

Also, mother was not prepared to care for Jeoffrey as she did not have adequate housing. Nor had she demonstrated to the Department her participation in the other elements of her case plan, such as parenting and individual counseling.

Consequently, although return of Jeoffrey to mother's care was the Department's goal, the Department opined that reunification at the 12-month stage was premature. Vista Del Mar's treatment program is a minimum of one year. This was explained to mother. Mother stated she wanted Jeoffrey to come home very soon, but respected the opinion and experience of the Department and Vista Del Mar. The Department recommended therefore, that the court continue reunification for another six months, to the 18-month time limit.

In a supplemental report in August 2003, the Department informed the court that mother had completed a parenting course in January 2003. However, mother was not in compliance with the case plan, as she had attended only six individual therapy sessions in nine months. Also, according to Geoffrey's psychiatrist, the joint therapy sessions were not progressing and important issues had not been addressed. Mother often denied there were any issues to address. The Department opined that, while "mother appears to be . . . well[-]meaning, there are serious treatment issues that must be addressed in a supportive therapeutic process so that successful reunification can take place." More important, Geoffrey himself stated that he enjoyed visits with mother and their relationship was improving, but he was still afraid of his mother's anger and remained ambivalent about returning home. Geoffrey did not want the length of visits to be extended. The Department recommended that wraparound services be suspended as they were detrimental to the family's treatment plan.

The juvenile court reiterated the Department's recommendation that mother attend therapy more than once a month. The court found the Department had made reasonable efforts to enable Geoffrey's safe return home, but that mother was only in partial compliance with the case plan. Reunification services were extended to January 2004, to afford the family the maximum period permitted.

#### *4. The 18-month review period.*

On October 7, 2003, mother returned Geoffrey early from a weekend visit after the boy became defiant. Mother claimed Geoffrey lost her driver's license and bank card and stole \$10.00 from her. Following the " 'safety plan,' " mother brought him back to Vista Del Mar early. Denying he took money, Geoffrey reported that after he lost mother's documents, she became extremely upset, yelled and swore at him, and threw a telephone. This scared Geoffrey. Hence, he was not sure that he wanted to participate in the upcoming family therapy session or to visit mother the following weekend.

The Department's January 15, 2004, report for the permanency review hearing (§ 366.22), reflected that Geoffrey continued to demonstrate academic and behavioral problems. He was being sent out of class for unmanageable behavior

problems on an average of twice a day. He was verbally and physically aggressive when angry or frustrated. His therapist suggested drugs to help him manage his anxiety, but mother was adamantly opposed to psychotropic medication. Jeoffrey did not like wraparound meetings and so the team agreed to let him leave after 10 minutes. Jeoffrey's main communication was with his therapist and the Department social worker. He was uncomfortable expressing opinions or feelings to wraparound staff or in meetings. Jeoffrey reported his relationship with mother was improving, but he remained fearful and distrustful of her and ambivalent about returning home.

Mother was not in compliance with her case plan. While she actively participated in wraparound meetings and visits had been liberalized to overnight, she only saw her individual therapist once a month, despite the court's directive that she attend more. Because she was not attending therapy more often, she was not resolving the problems that caused her to be violent towards Jeoffrey. The social worker found that mother was generally cooperative if she did not have to deal with her own issues.

Vista Del Mar's residential treatment team opined Jeoffrey would be at risk if he were to return to mother's care. Jeoffrey's negative behaviors had escalated in recent months, and so for treatment purposes, the team opined that Jeoffrey should not yet be returned to mother. He had generated a series of negative and special incident reports. The social worker believed three factors caused his regression: (1) Jeoffrey needed to sabotage the permanency planning hearing because it caused him anxiety. (2) His mother and stepfather were considering a reconciliation. While Jeoffrey was happy about that, he had "vivid memories and flashbacks of his mother physically hurting [his stepfather]." (3) Jeoffrey's maternal grandmother's untimely death was traumatic and the one-year anniversary has been difficult for him. Jeoffrey told the social worker that although he wanted to return home at some point in the future, he was not comfortable doing so by the 18-month date. He liked having Vista Del Mar to return to. In front of mother, Jeoffrey stated he wanted to go home; but away from mother, he said otherwise.

Adoption was not deemed appropriate. The Department recommended long-term foster care as the permanent plan, as there was a good chance, according to the social worker, that the family would ultimately be able to reunify.

*5. The 18-month hearing.*

The supervising social worker from the Department testified at the contested 18-month hearing. (§ 366.22.) A licensed therapist, the social worker opined that mother had not developed the skills necessary to have Jeffrey safely returned to her at the time of the hearing. The Department was very concerned about an incident involving violent behavior that could have harmed Jeffrey. The social worker believed there was a risk of physical violence if Jeffrey were returned to mother at this point. The social worker explained that mother did not display a knowledge of Jeffrey's needs. Mother did not seem to understand, or be able to listen to, the experts about Jeffrey's behavioral problems and resolution of those issues. She could not separate her own needs from those of her son. This lack of understanding could cause her to hurt the boy. And, the social worker was concerned that Jeffrey could hurt mother. The social worker opined that attendance at counseling once a month was not sufficient individual counseling to make the sort of improvement needed to enable Jeffrey to return home.

Mother testified she attended 13 one-hour individual therapy sessions in 18 months. Since July 2003, Jeffrey visited her overnight on weekends. She had been able to implement what she learned in parenting classes and counseling during those visits to a better parent Jeffrey. Mother explained the only incident in which she "lost [her] cool" was when she threw the telephone. Otherwise, when she encountered a problem, mother would take the issue to counseling. Mother was afraid that if the court ordered long-term foster care, it would be more difficult for Jeffrey to return home.

At the close of the hearing, the juvenile court found "by more than just a preponderance of the evidence" that return of Jeffrey to mother's physical custody would create a substantial risk of detriment to his physical or emotional well-being. The court found that mother had only partially complied with the case plan, which constituted prima facie evidence that return would be detrimental. The court stated that mother's

monthly attendance in individual counseling was “getting halfway there, and . . . doing half the work . . . .” Despite mother’s understanding of counseling and anger management, and her use of the lingo, the court did not believe mother had made substantive progress in therapy. Noting Jeoffrey is not a typical adolescent, but a child who is “out of control,” the court found mother was not able to parent Jeoffrey on a full-time basis. The court terminated reunification services, and ordered long-term foster care as the permanent plan for Jeoffrey. Mother filed her appeal.<sup>3</sup>

### CONTENTION

Mother contends (1) the juvenile court’s detriment finding was not supported by substantial evidence; (2) the Department failed to provide reasonable reunification services; and (3) the court abused its discretion by failing to extend reunification services past the statutory 18-month date.

### DISCUSSION

#### 1. *The finding of detriment was supported by substantial evidence.*

At the permanent planning review hearing under to section 366.22, the juvenile court “shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) The social worker has the burden to demonstrate detriment. (*Ibid.*)

When making its decision, the statute directs the juvenile court to take into account the reports and recommendations of the Department and of child advocates. The court must also consider, inter alia, “the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services

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<sup>3</sup> There is no evidence in the record that the juvenile court notified mother of her rights and duties under California Rules of Court, rule 39.1B and section 366.26, subdivision (l)(3)(A). Therefore, mother’s appeal was timely and the requirement of section 366.26, subdivision (l) that the challenge to the order setting the section 366.26 hearing be made by petition for extraordinary writ review does not apply.



provided . . . .” (§ 366.22, subd. (a).) In evaluating the parent’s progress, the court looks at the parent’s effort to eliminate the conditions leading to the child’s out-of-home placement. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.) The court may also evaluate, among other things, mother’s instability in managing a home, the extent of her awareness of the emotional and physical needs of the child, and the manner in which she conducted herself in relation to the child in the past. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705.)

On appeal, we review the juvenile court’s findings for substantial evidence. We consider only whether there is any evidence, contradicted or not, which would support the court’s conclusions. We may not substitute other deductions for those of the trier of fact. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

We agree with mother that she has “substantially complied” with *much* of the terms of the reunification plan. Mother enrolled in and completed the parenting course early in the dependency, has regularly attended wraparound sessions at Vista Del Mar, participated in family therapy, and regularly visited Jeoffrey. Indeed, her visits were liberalized to include overnight on weekends. There is no question that, to the extent she participated, mother was active.

However, as mother herself admits, *she failed to comply with the individual counseling component, an essential element of her case plan.* Mother attended individual counseling only once per month. Not only had the Department told mother she must attend more frequently, but the court reiterated that requirement. The evidence supports the court’s finding at the 18-month hearing that 13 therapy sessions in 18 months was not compliance with the case plan.

Because mother failed to more frequently attend to the individual-counseling element of her case plan, she did not make substantive progress during the reunification period. The record shows mother has not been resolving the very problems that caused her to be violent towards Jeoffrey. Mother was cooperative in wraparound sessions and joint therapy, *unless she had to address her own issues*, some of the very issues that triggered the dependency, and that cause Jeoffrey so much fear of and anger towards her.

Mother even denied there were any issues to be addressed. The incident that occurred only a few months before the 18-month hearing demonstrates not only that mother remains unable to properly discipline Jeoffrey, but also that she does not have control of her own emotions. Even her outbursts in court demonstrate her lack of self-control. Also, mother has yet to demonstrate an understanding of Jeoffrey's problems and behavior. This causes the Department concern that mother or Jeoffrey could lose control and hurt the other. Mother's lack of insight into Jeoffrey's needs is yet another factor militating against return of Jeoffrey. (*Constance K. v. Superior Court, supra*, 61 Cal.App.4th at p. 705.)

Mother points to a letter from her therapist as evidence of her progress. Dated January 14, 2004, at the close of *the statutory 18 months of reunification*, this letter indicated mother "has been willing to deal with owning inappropriate discipline and to deal with parent[-]child relation issues." The letter does not state mother has fully dealt with the issues that triggered the dependency, or even that mother had yet made any progress in therapy. Nor does the letter recommend that juvenile court jurisdiction be terminated. Mother's own therapist stated only that mother *has been willing* to address issues.

Nor has mother made progress in other areas of her reunification plan. Mother argues the evidence of her progress in therapy is the liberalization of visits with Jeoffrey. Not so. While visits were liberalized, Jeoffrey still feels he needs the safety of Vista Del Mar to return to. He did not want the length of visits extended and thus has never been alone with mother during the stressful work-week. Also, just three months before the 18-month hearing, mother had to send Jeoffrey back to Vista Del Mar early from a visit because of his behavior and her inability to control him or herself. In short, visits had not been so successful that we can say mother has made *substantial* progress.

In the final analysis, mother's failure to make substantial progress in therapy is typified by her very insistence that Jeoffrey be returned to her. Mother's inability to separate her own needs from those of her son, and lack of understanding of Jeoffrey's serious problems and needs, causes mother to ignore the salient fact, raised by the court

and the Department, that Jeffrey is *afraid of mother because of her physical abuse of and violence toward him and his step-father; does not want to return to mother yet; is sabotaging his own therapy to avoid return; and feels safer with Vista Del Mar as his escape*. Jeffrey's main communication remains his therapist, not the wraparound team or mother. Indeed, other than mother herself, absolutely no professional or paraprofessional has opined that Jeffrey could be safely returned to mother in February 2004. Rather, the professionals in this case from Vista Del Mar to the Department have all concluded that returning Jeffrey to mother would put him at substantial risk of physical, or emotionally detriment. "[W]hile a goal of child welfare services provided to the minor and family [citation] is to help the parents correct problems that caused the minor to be made a dependent child of the court [citation], and thus to permit family reunification, the focus of dependency law is on the well-being of the minor. [¶] Hence, the question whether to return a child to parental custody is not governed solely by whether the parent has corrected the problem that required court intervention; rather, the court must consider the effect such return would have on the child." (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 901.)

According to section 366.22, "[t]he failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be *prima facie* evidence that return would be detrimental." (§ 366.22, subd. (a), par. 1, italics added.) While mother availed herself of most of the programs provided, she appears to have made little progress in her court-ordered individual therapy to eliminate some of the very issues which brought about Jeffrey's dependency. (*In re Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1141-1142.) Therefore, the evidence supports the court's conclusion by a preponderance of the evidence that return of Jeffrey to mother's custody would create a substantial risk of detriment to his safety and emotional well-being. (§ 366.22, subd. (a).)

## *2. The Department provided reasonable services.*

The law requires that "[e]ach reunification plan . . . be appropriate to the particular individual and based on the unique facts of that individual." (*In re Misako R.* (1991)

2 Cal.App.4th 538, 545.) Reunification services “must be designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding.” (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Hence, “ ‘the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with [mother] during the course of the service plan, and made *reasonable* efforts to assist [mother] in areas where compliance proved difficult. . . .’ [Citation.]” (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555, original italics.) We review the evidence in a light most favorable to the respondent and indulge in all reasonable and legitimate inferences to uphold the judgment. (*In re Misako R., supra.*)

The jurisdictional finding here was triggered by mother’s violence and physical abuse of Jeoffrey, and her inability to control Jeoffrey, who is an extremely difficult child with rather severe behavioral and psychological problems. Mother, by her own admission, had lost control of the child and was unable to discipline him. Viewing the evidence in a light most favorable to the Department, it shows that the social workers actively provided services designed to eliminate the serious conditions that led to the dependency jurisdiction. (*In re Dino E., supra*, 6 Cal.App.4th at p. 1777.) The Department not only provided mother with referrals to programs mother was ordered to participate in, but also facilitated programs that went beyond the court’s orders. The Department referred mother to parenting classes, therapy, joint therapy, and monitored visitation. The Department found Jeoffrey a top-notch, safe residential treatment facility, followed up on the family’s participation in the services that facility provided, partook actively in wraparound programs, and coordinated mother’s therapy with the psychotherapy Jeoffrey was undergoing. As for its efforts, the Department was active in its participation, even going to court to resolve perceived problems with wraparound and mother’s failure to participate in individual therapy often enough. “The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R., supra*,

2 Cal.App.4th at p. 547.) In our view, under the circumstances of this case, the services were far more than merely reasonable.

3. *The court did not err in refusing to extend services beyond the 18-month statutory deadline.*

Mother contends the juvenile court abused its discretion by failing to extend her reunification services past the statutory limit of 18 months.

Because Jeoffrey was more than three years of age when he was detained, he was entitled to court-ordered services that “*shall not exceed* a period of 12 months from the date the child *entered foster care . . .*” (§ 361.5, subd. (a)(1), italics added.) The court may extend the period *up to a maximum of 18 months* “*only if* it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period *or that reasonable services have not been provided to the parent or guardian.*” (§ 361.5, subd. (a)(3), par. 4, italics added.) As explained above, the court found, and the evidence supports the finding, that reasonable services were provided and there is no evidence Jeoffrey will be returned home soon.

It is the case that the juvenile court may, in the exercise of its discretion, extend reunification services beyond the statutory time limit in a special needs case. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388, citing *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1793-1799, *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1213-1214, & *In re Dino E., supra*, 6 Cal.App.4th at pp. 1777-1778.) However, in each of the cited cases, extraordinary circumstances were present, justifying extension of reunification services beyond the statutory 18-month limit. Such circumstances always involve “some external factor which prevented the parent from participating in the case plan.” (*Ibid.*) No external factor prevented mother from attending her individual therapy counseling more frequently, or from making substantial progress toward resolution of the issues that triggered the dependency. The juvenile court did not abuse its discretion in declining to extend reunification services beyond the 18-month limit.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P.J.

CROSKEY, J.